



**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

**[Docket No. 190802-0010]**

**RIN 0648-BI93**

**Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; Framework Adjustment 14**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes modifications to aspects of the commercial and recreational summer flounder, scup, and black sea bass management program, as recommended by the Mid-Atlantic Fishery Management Council. NMFS proposes these management measure adjustments to provide an opportunity for public comment. The intent of this action is to allow for more flexibility in the management of these species.

**DATES:** Comments must be received by *[insert date 30 days after date of publication in the FEDERAL REGISTER]*.

**ADDRESSES:** You may submit comments on this document, identified by NOAA-NMFS-2019-0049, by either of the following methods:

*Electronic submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal.

- Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0049*,
- Click the “Comment Now!” icon, complete the required fields

- Enter or attach your comments.

**- OR -**

*Mail:* Submit written comments to Michael Pentony, Regional Administrator, Greater Atlantic Region, 55 Great Republic Drive, Gloucester, MA 01930.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

An environmental assessment (EA) was prepared for this action that describes the proposed measures and other considered alternatives, and provides an analysis of the impacts of the proposed measures and alternatives. Copies of the EA are available on request from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 North State Street, Dover, DE 19901. These documents are also accessible via the Internet at [http://www.mafmc.org/s/SFSBSB\\_Framework14\\_EA.pdf](http://www.mafmc.org/s/SFSBSB_Framework14_EA.pdf).

**FOR FURTHER INFORMATION CONTACT:** Emily Gilbert, Fishery Policy Analyst, (978) 281-9244.

## **SUPPLEMENTARY INFORMATION:**

### **General Background**

The summer flounder, scup, and black sea bass fisheries are managed cooperatively under the provisions of the Summer Flounder, Scup, and Black Sea Bass Fishery Management

Plan (FMP) developed by the Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission, in consultation with the New England and South Atlantic Fishery Management Councils. The management units specified in the FMP include summer flounder (*Paralichthys dentatus*) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina northward to the U.S./Canada border, and scup (*Stenotomus chrysops*) and black sea bass (*Centropristis striata*) in U.S. waters of the Atlantic Ocean from 35° 13.3' N. lat. (the approximate latitude of Cape Hatteras, North Carolina). States manage these three species within 3 nautical miles (4.83 km) of their coasts, under the Commission's management plan for summer flounder, scup, and black sea bass. The applicable species-specific Federal regulations govern vessels and individual fishermen commercially fishing in Federal waters of the exclusive economic zone, as well as vessels possessing a summer flounder, scup, or black sea bass Federal charter/party vessel permit, regardless of where they fish. This rule proposes management measures intended to provide more flexibility in the commercial and recreational fisheries for these species and includes the following modifications to the FMP:

- Include conservation equivalency as an annual management consideration for the black sea bass recreational fishery;
- Create a Federal waters transit zone for non-federally permitted vessels fishing in state waters around Block Island Sound; and
- Incorporate a maximum recreational size limit in the list of potential specification measures for summer flounder and black sea bass.

These measures, which are further explained below, are consistent with the recommendations of the Council and the Commission's Summer Flounder, Scup, and Black Sea Bass Management Board for this action.

## **Proposed Management Measures**

### *Black Sea Bass Conservation Equivalency*

This action proposes to allow conservation equivalency for future use in the recreational black sea bass fishery based on the process currently used for summer flounder. Under conservation equivalency, the Council and Board would decide each year whether to use Federal coastwide measures or conservation equivalency to manage the recreational black sea bass fishery. Conservation equivalency would waive Federal measures so long as the states implement appropriate measures. If they agree to use conservation equivalency, they must also develop a set of non-preferred coastwide measures (minimum and/or maximum fish size limit, possession limit, and season) that would be expected to prevent harvest from exceeding the annual recreational harvest limit. The Council and Board must also recommend a suite of precautionary default measures that would apply to all recreational anglers and Federal party/charter permit holders fishing in Federal waters and landing black sea bass in states that do not develop and implement Commission-approved conservationally equivalent measures.

If the Council and Board agree to use conservation equivalency in a given year, the Board would determine the states' management program to implement conservation equivalency for black sea bass in any given year through a separate action. After reviewing and approving the state/regional proposals, the Commission would submit a letter to us certifying that the combination of state and regional measures is expected to prevent black sea bass harvest from exceeding that year's recreational harvest limit. Based on the Commission's certification, we would be able to approve conservation equivalency and waive Federal measures for the remainder of the calendar year in favor of the state or regional conservation equivalency measures. Federally-permitted vessels and vessels fishing in Federal waters would then be

**August**

- Council recommends the recreational harvest limit to NMFS. Board takes final action on recreational harvest limit for state waters.

**October**

- Preliminary Marine Recreational Information Program (MRIP) data for waves 1-4 (*i.e.*, January - August) of the current year are available.

**November**

- Monitoring Committee reviews MRIP data through wave 4 and recommends overall percent reduction required or liberalization allowed and use of coastwide measures or conservation equivalency (including non-preferred coastwide and precautionary default measures).

**December**

- Council/Board recommend conservation equivalency or coastwide measures for the following year. If they select conservation equivalency, they also recommend non-preferred coastwide and precautionary default measures.
- NMFS publishes final rule announcing subsequent year's recreational harvest limit.

subject to the regulations in the states where they land their catch. If the Commission submits a letter to us announcing that a state or states have not implemented appropriate measures, the state(s) would be required to implement precautionary default measures in state waters through the Commission, and we would similarly apply those precautionary default measures to recreational anglers and Federal party/charter permit holders landing black sea bass in applicable states. If a state or region implements measures which are not approved, the Commission would require the precautionary default measures to be enforced in that state or region and would request NMFS to apply those measures to recreational anglers and federally permitted party/charter vessels fishing in Federal waters and landing black sea bass in those states as well. Table 1 outlines the conservation equivalency timeline for management decisions, based on the current process for summer flounder. Non-preferred coastwide measures would be implemented (1) if we do not approve conservation equivalency, or (2) at the start of the next fishing year (*i.e.*, when conservation equivalency for a given year has expired).

<u><i>If Conservation Equivalency Is Recommended</i></u>	<u><i>If Coastwide Measures Are Recommended</i></u>
<p><b>January</b></p> <ul style="list-style-type: none"> <li>• States/regions submit conservation equivalency proposals to Commission staff.</li> <li>• Technical Committee evaluates proposals.</li> </ul> <p><b>February</b></p> <ul style="list-style-type: none"> <li>• Board reviews and approves/disapproves proposals.</li> </ul> <p><b>February/March</b></p> <ul style="list-style-type: none"> <li>• Council staff submits recreational measure package to NMFS. Package includes: <ul style="list-style-type: none"> <li>○ Overall percent reduction required or liberalization allowed;</li> <li>○ Non-preferred coastwide and precautionary default measures; and</li> <li>○ Recommendation to implement conservation equivalency.</li> </ul> </li> </ul> <p><b>April</b></p> <ul style="list-style-type: none"> <li>• NMFS publishes proposed rule for recreational measures announcing the overall percent reduction required or liberalization allowed and the non-preferred coastwide and precautionary default measures.</li> <li>• Board submits letter to NMFS certifying that the combination of state/regional measures is not expected to result in harvest exceeding the recreational harvest limit.</li> </ul> <p><b>May</b></p> <ul style="list-style-type: none"> <li>• NMFS publishes final rule announcing overall percent reduction required or liberalization allowed and approval of conservation equivalency; or coastwide measures.</li> </ul>	<p><b>February/March</b></p> <ul style="list-style-type: none"> <li>• Council staff submits recreational measure package to NMFS. Package includes: <ul style="list-style-type: none"> <li>○ Overall percent reduction required or liberalization allowed; and</li> <li>○ Coastwide measures.</li> </ul> </li> </ul> <p><b>April</b></p> <ul style="list-style-type: none"> <li>• NMFS publishes proposed rule for recreational measures announcing the overall percent reduction required or liberalization allowed and coastwide measures.</li> </ul> <p><b>May</b></p> <ul style="list-style-type: none"> <li>• NMFS publishes final rule announcing overall percent reduction required or liberalization allowed and coastwide measures.</li> </ul>

Table 1 -- Approximate timeline for implementing conservation equivalency

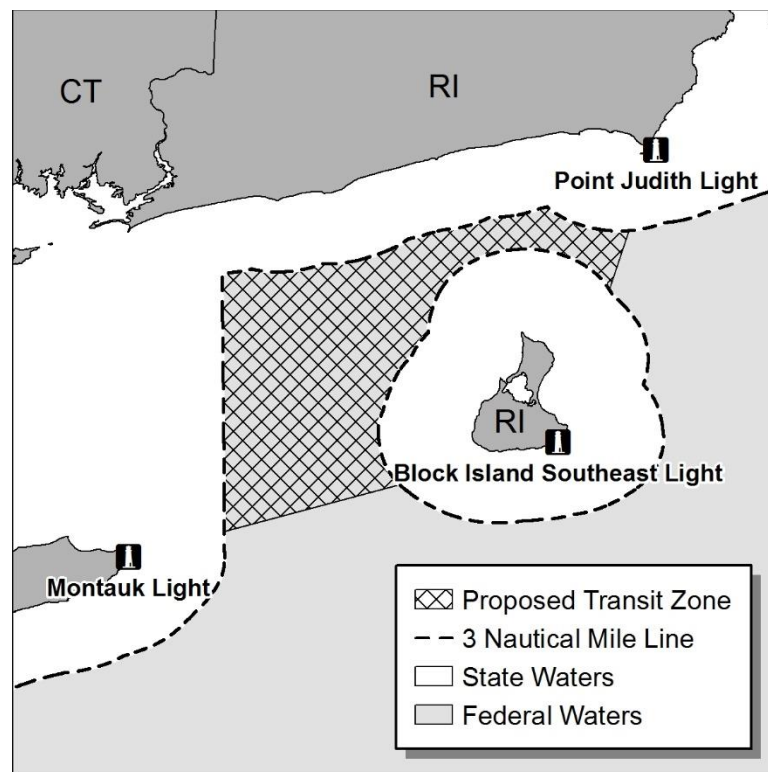
### *Block Island Sound Transit Zone*

This action also proposes a transit area for state-only permitted vessels fishing around Block Island to address issues when Federal and state management measures differ. The transit zone would mirror the current transit area for striped bass and allow for transit by state-only permitted commercial and party/charter vessels and private recreational anglers with summer flounder, scup, and black sea bass on board that were legally harvested in state waters (Figure 1).

These vessels could transit between the Rhode Island state waters surrounding Block Island and the coastal state waters of Rhode Island, New York, Connecticut, or Massachusetts while complying with the state waters measures for those species. Transit through the defined area would be allowed, provided that fishermen and harvest are compliant with all applicable state regulations, gear is stowed in accordance with Federal regulations, no fishing takes place from the vessel while in Federal waters, and the vessel is in continuous transit.

This transit provision does not apply to federally permitted vessels. There would be no change to current Federal regulations requiring all federally permitted vessels to abide by the measures of the state(s) in which they harvest or land their catch, or the Federal waters measures, whichever are more restrictive.

Figure 1 -- Proposed Block Island Sound Transit Area



#### *Inclusion of Maximum Size Limit*

Although the states are able to set a maximum size limit for fish caught in state waters,

only a minimum size can be specified in the current Federal regulations. By including a maximum size, the Council could recommend both a minimum and maximum recreational size limit to allow for consideration of regular slot limits, split slot limits, and trophy fish when setting recreational measures each year. The proposed measure would only be for summer flounder and black sea bass. The Commission already has the flexibility to develop slot limits in state waters. This measure does not make any immediate adjustments to any current Federal recreational measures, but would add flexibility in specifying recreational management measures and would allow for future consideration by the Council.

### **Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator has determined that this proposed rule is consistent with the Summer Flounder, Scup, and Black Sea Bass FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

The Council reviewed the proposed regulations for this action and deemed them necessary and appropriate to implement consistent with section 303(c) of the Magnuson-Stevens Conservation and Management Act.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The Council conducted an evaluation of the potential socioeconomic impacts of the proposed measures. According to the commercial ownership database, 869 for-hire affiliate firms



generated revenues from recreational fishing for various species during the 2015-2017 period.

All of those business affiliates are categorized as small businesses. A similar affiliate database is not available for non-federally permitted vessels. As previously stated, the transit provision for Block Island Sound applies only to non-federally permitted commercial and recreational vessels. The number of commercial and recreational affiliates which are legally authorized to fish in Rhode Island state waters and do not hold Federal commercial or party/charter permits for summer flounder, scup, and black sea bass has not been assessed. However, based on the federally permitted recreational fishing fleet, it is expected that most, if not all, of these entities would be classified as small businesses.

This action would include conservation equivalency as an annual management consideration for the black sea bass fishery, incorporate a maximum recreational size limit in the list of potential specifications measures for summer flounder and black sea bass, and create a Federal water transit area for non-federally permitted vessels fishing in state waters around Block Island Sound. The first two management measures are administrative in nature and make no immediate changes to the fisheries, but are expected to result in increased angler satisfaction by allowing for consistency of measures in state and Federal waters. If the Council and Board utilize these provisions when setting recreational specifications in the future, those impacts will be evaluated. The last management measure, which would allow non-federally permitted recreational and commercial vessels to transit a defined area in Block Island Sound while complying with the state regulations for summer flounder, scup, and black sea bass, only applies to state-only permitted vessels and does not impact federally permitted vessels. This transit area would likely result in a slight increase in fishing activity in Rhode Island state waters around Block Island by state-only permitted commercial and recreational vessels, but landings will still

be constrained by annual harvest limits.

Because this action would either implement administrative measures or allow for a slight increase in fishing opportunities and revenues, this rule will not have a significant economic impact on a substantial number of small entities. Therefore, an initial regulatory flexibility analysis is not required and none has been prepared.

There are no new reporting or recordkeeping requirements contained in this action.

#### **List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 8, 2019.

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Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

#### **PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES**

1. The authority citation for part 648 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. In § 648.14, revise paragraphs (n)(1)(i), (o)(1) introductory text, (p)(1) introductory text, (p)(1)(i) and (v), and (p)(2) introductory text, to read as follows:

**§ 648.14 Prohibitions.**

\* \* \* \* \*

(n) \* \* \*

(1) \* \* \*

(i) *Permit requirement.* Possess summer flounder in or harvested from the EEZ, either in excess of the possession limit specified in § 648.106, or before or after the time period specified in § 648.105, unless the vessel was issued a summer flounder moratorium permit and the moratorium permit is on board the vessel and has not been surrendered, revoked, or suspended. However, possession of summer flounder harvested from state waters is allowed for state-only permitted vessels when transiting Federal waters within the Block Island Sound Transit Area provided they follow the provisions at § 648.111.

\* \* \* \* \*

(o) \* \* \*

(1) *All persons.* Unless a vessel is participating in a research activity as described in § 648.122(e) or unless a vessel has no Federal scup permit, possesses scup caught exclusively in state waters, and is transiting Federal waters within the Block Island Sound Transit Area in accordance with the provisions at § 648.131, it is unlawful for any person to do any of the following:

\* \* \* \* \*

(p) \* \* \*

(1) *All persons.* Unless participating in a research activity as described in § 648.142(e), it is unlawful for any person to do any of the following:

(i) *Permit requirement.* Possess black sea bass in or harvested from the EEZ north of 35°15.3' N. lat., either in excess of the possession limit established pursuant to § 648.145, or before or after the time period established pursuant to § 648.146, unless the person is operating a vessel issued a moratorium permit under § 648.4 and the moratorium permit is on board the vessel. However, possession of black sea bass harvested from state waters is allowed for state-only permitted vessels when transiting Federal waters within the Block Island Sound Transit Area provided they follow the provisions at § 648.151.

\* \* \* \* \*

(v) *Size limits.* Fish for, possess, land, or retain black sea bass in or from the EEZ that does not comply with the minimum or maximum (as applicable) fish size specified in § 648.147.

\* \* \* \* \*

(2) *Vessel and operator permit holders.* Unless participating in a research activity as described in § 648.142(e), it is unlawful for any person owning or operating a vessel issued a black sea bass permit (including a moratorium permit) to do any of the following:

\* \* \* \* \*

3. In § 648.102, revise paragraphs (a)(7), and (d)(2)(ii) through (iv) to read as follows:

**§ 648.102 Summer flounder specifications.**

(a) \* \* \*

(7) Recreational minimum and/or maximum fish size.

\* \* \* \* \*

(d) \* \* \*

(2) \* \* \*

(ii) The ASMFC will review conservation equivalency proposals and determine whether or not they achieve the necessary adjustment to recreational landings. The ASMFC will provide the Regional Administrator with the individual state and/or multi-state region conservation measures for the approved state and/or multi-state region proposals and, in the case of disapproved state and/or multi-state region proposals, the precautionary default measures that should be applied to a state or region. At the request of the ASMFC, precautionary default measures would apply to federally permitted party/charter vessels and other recreational fishing vessels harvesting summer flounder in or from the EEZ when landing in a state that implements measures not approved by the ASMFC.

(iii) After considering public comment, the Regional Administrator will publish a final rule in the **Federal Register** to implement either the state specific conservation equivalency measures or coastwide measures to ensure that the applicable specified target is not exceeded.

(iv) The ASMFC may allow states assigned the precautionary default measures to resubmit revised management measures. The ASMFC will detail the procedures by which the state can develop alternate measures. The ASMFC will notify the Regional Administrator of any resubmitted state proposals approved subsequent to publication of the final rule and the Regional Administrator will publish a notice in the **Federal Register** to notify the public.

\* \* \* \* \*

4. In § 648.104, revise the section heading and paragraphs (b) and (c) to read as follows:

**§ 648.104 Summer flounder size requirements.**

\* \* \* \* \*

(b) *Party/charter permitted vessels and recreational fishery participants.* The minimum

size for summer flounder is 19 inches (48.3 cm) TL for all vessels that do not qualify for a moratorium permit under § 648.4(a)(3), and charter boats holding a moratorium permit if fishing with more than three crew members, or party boats holding a moratorium permit if fishing with passengers for hire or carrying more than five crew members, unless otherwise specified in the conservation equivalency regulations at § 648.107. If conservation equivalency is not in effect in any given year, possession of smaller (or larger, if applicable) summer flounder harvested from state waters is allowed for state-only permitted vessels when transiting Federal waters within the Block Island Sound Transit Area provided they follow the provisions at § 648.111 and abide by state regulations.

(c) The size limits in this section apply to whole fish or to any part of a fish found in possession, *e.g.*, fillets, except that party and charter vessels possessing valid state permits authorizing filleting at sea may possess fillets smaller than the size specified if all state requirements are met.

5. Revise § 648.105 to read as follows:

**§ 648.105 Summer flounder recreational fishing season.**

No person may fish for summer flounder in the EEZ from May 15 through September 15 unless that person is the owner or operator of a fishing vessel issued a commercial summer flounder moratorium permit, or is issued a summer flounder dealer permit, or unless otherwise specified in the conservation equivalency measures at § 648.107. Persons aboard a commercial vessel that is not eligible for a summer flounder moratorium permit are subject to this recreational fishing season. This time period may be adjusted pursuant to the procedures in § 648.102. Possession of summer flounder harvested from state waters during this time is allowed for state-only permitted vessels when transiting Federal waters within the Block Island Sound

Transit Area provided they follow the provisions at § 648.111 and abide by state regulations.

6. In § 648.106, revise paragraph (a) to read as follows:

**§648.106 Summer flounder possession restrictions.**

(a) *Party/charter and recreational possession limits.* No person shall possess more than four summer flounder in, or harvested from, the EEZ, per trip unless that person is the owner or operator of a fishing vessel issued a summer flounder moratorium permit, or is issued a summer flounder dealer permit, or unless otherwise specified in the conservation equivalency measures at § 648.107. Persons aboard a commercial vessel that is not eligible for a summer flounder moratorium permit are subject to this possession limit. The owner, operator, and crew of a charter or party boat issued a summer flounder moratorium permit are subject to the possession limit when carrying passengers for hire or when carrying more than five crew members for a party boat, or more than three crew members for a charter boat. This possession limit may be adjusted pursuant to the procedures in § 648.102. Possession of summer flounder harvested from state waters above this possession limit is allowed for state-only permitted vessels when transiting Federal waters within the Block Island Sound Transit Area provided they follow the provisions at § 648.111 and abide by state regulations.

\* \* \* \* \*

7. In § 648.107, revise paragraph (a) introductory text and paragraph (b) to read as follows:

**§ 648.107 Conservation equivalent measures for the summer flounder fishery.**

(a) The Regional Administrator has determined that the recreational fishing measures proposed to be implemented by the states of Maine through North Carolina for 2019 are the conservation equivalent of the season, size limits, and possession limit prescribed in §§

648.104(b), 648.105, and 648.106. This determination is based on a recommendation from the Summer Flounder Board of the Atlantic States Marine Fisheries Commission.

\* \* \* \* \*

(b) Federally permitted vessels subject to the recreational fishing measures of this part, and other recreational fishing vessels registered in states and subject to the recreational fishing measures of this part, whose fishery management measures are not determined by the Regional Administrator to be the conservation equivalent of the season, size limits and possession limit prescribed in §§ 648.102, 648.103(b), and 648.105(a), respectively, due to the lack of, or the reversal of, a conservation equivalent recommendation from the Summer Flounder Board of the Atlantic States Marine Fisheries Commission shall be subject to the following precautionary default measures: Season—July 1 through August 31; minimum size—20 inches (50.8 cm); and possession limit—two fish.

8. Add § 648.111 to read as follows:

**§ 648.111 Block Island Sound Transit Area.**

(a) Vessels not issued a Federal moratorium or party/charter permit, and recreational fishing participants fishing exclusively in state waters may transit with summer flounder harvested from state waters on board through Federal waters of the EEZ within Block Island Sound, north of a line connecting Montauk Light, Montauk Point, NY, and Block Island Southeast Light, Block Island, RI; and west of a line connecting Point Judith Light, Point Judith, RI, and Block Island Southeast Light, Block Island, RI. Within this area, possession of summer flounder is permitted regardless of the minimum or maximum size (as applicable), possession limit, and seasons outlined in §§ 648.104, 648.105, and 648.106, provided no fishing takes place from the vessel while in Federal waters of the EEZ, the vessel complies with state regulations,



and is in continuous transit. During such transit through this area, commercial gear must be stowed in accordance with the definition of “not available for immediate use” found at § 648.2, and party/charter vessels and recreational participants must have all bait and hooks removed from fishing rods, and any summer flounder on board must be stored in a cooler or container.

(b) The requirements of this transit zone are not necessary or applicable for recreational fishery participants during years when conservation equivalency has been adopted under § 648.107 conservation equivalency measures and recreational Federal measures are waived.

9. In § 648.126, revise paragraph (b) to read as follows:

**§ 648.126 Scup minimum fish sizes.**

\* \* \* \* \*

(b) *Party/Charter permitted vessels and recreational fishery participants.* The minimum size for scup is 9 inches (22.9 cm) TL for all vessels that do not have a moratorium permit, or for party and charter vessels that are issued a moratorium permit but are fishing with passengers for hire, or carrying more than three crew members if a charter boat, or more than five crew members if a party boat. However, possession of smaller scup harvested from state waters is allowed for state-only permitted vessels when transiting Federal waters within the Block Island Sound Transit Area provided they follow the provisions at § 648.131 and abide by state regulations.

\* \* \* \* \*

10. Revise § 648.127 to read as follows:

**§ 648.127 Scup recreational fishing season.**

Fishermen and vessels that are not eligible for a moratorium permit under § 648.4(a)(6), may possess scup year-round, subject to the possession limit specified in § 648.128(a). The

recreational fishing season may be adjusted pursuant to the procedures in § 648.122. Should the recreational fishing season be modified, non-federally permitted vessels abiding by state regulations may transit with scup harvested from state waters on board through the Block Island Sound Transit Area following the provisions outlined in § 648.131.

11. In § 648.128, revise paragraph (a) to read as follows:

**§ 648.128 Scup possession restrictions.**

(a) *Party/Charter and recreational possession limits.* No person shall possess more than 50 scup in, or harvested from, per trip the EEZ unless that person is the owner or operator of a fishing vessel issued a scup moratorium permit, or is issued a scup dealer permit. Persons aboard a commercial vessel that is not eligible for a scup moratorium permit are subject to this possession limit. The owner, operator, and crew of a charter or party boat issued a scup moratorium permit are subject to the possession limit when carrying passengers for hire or when carrying more than five crew members for a party boat, or more than three crew members for a charter boat. This possession limit may be adjusted pursuant to the procedures in § 648.122. However, possession of scup harvested from state waters above this possession limit is allowed for state-only permitted vessels when transiting Federal waters within the Block Island Sound Transit Area provided they follow the provisions at § 648.131 and abide by state regulations.

\* \* \* \* \*

12. Add § 648.131 to read as follows:

**§ 648.131 Block Island Sound Transit Area.**

(a) Vessels not issued a Federal moratorium or party/charter permit, and recreational fishing participants fishing exclusively in state waters may transit with scup harvested from state waters on board through Federal waters of the EEZ within Block Island Sound, north of a line

connecting Montauk Light, Montauk Point, NY, and Block Island Southeast Light, Block Island, RI; and west of a line connecting Point Judith Light, Point Judith, RI, and Block Island Southeast Light, Block Island, RI. Within this area, possession of scup is permitted regardless of the minimum size, possession limit, and seasons outlined in §§ 648.126, 648.127, and 648.128, provided no fishing takes place from the vessel while in Federal waters of the EEZ, the vessel complies with state regulations, and is in continuous transit. During such transit through this area, commercial gear must be stowed in accordance with the definition of “not available for immediate use” found at § 648.2, and party/charter vessels and recreational participants must have all bait and hooks removed from fishing rods, and any scup on board must be stored in a cooler or container.

13. Revise § 648.142 to read as follows:

**§ 648.142 Black sea bass specifications.**

(a) *Commercial quota, recreational landing limit, research set-aside, and other specification measures.* The Black Sea Bass Monitoring Committee will recommend to the Demersal Species Committee of the MAFMC and the ASMFC, through the specification process, for use in conjunction with the ACL and ACT, sector-specific research set-asides, estimates of the sector-related discards, a recreational harvest limit, a commercial quota, along with other measures, as needed, that are projected to ensure the sector-specific ACL for an upcoming year or years will not be exceeded. The following measures are to be considered by the Black Sea Bass Monitoring Committee:

(1) Research quota set from a range of 0 to 3 percent of the maximum allowed.

(2) A commercial quota, allocated annually.

(3) A commercial possession limit for all moratorium vessels, with the provision that these quantities be the maximum allowed to be landed within a 24-hour period (calendar day).

(4) Commercial minimum fish size.

(5) Minimum mesh size in the codend or throughout the net and the catch threshold that will require compliance with the minimum mesh requirement.

(6) Escape vent size.

(7) A recreational possession limit set after the reduction for research quota.

(8) Recreational minimum and/or maximum fish size.

(9) Recreational season.

(10) Recreational state conservation equivalent and precautionary default measures utilizing possession limits, minimum fish sizes, and/or seasons set after reductions for research quota.

(11) Restrictions on gear other than otter trawls and pots or traps.

(12) Total allowable landings on an annual basis for a period not to exceed 3 years.

(13) Changes, as appropriate, to the SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, the process for prioritizing observer sea-day allocations, reports, and/or industry-funded observers or observer set aside programs.

(14) Modification of the existing AM measures and ACT control rules utilized by the Black Sea Bass Monitoring Committee.

(b) *Specification fishing measures.* The Demersal Species Committee shall review the recommendations of the Black Sea Bass Monitoring Committee. Based on these recommendations and any public comment, the Demersal Species Committee shall make its

recommendations to the MAFMC with respect to the measures necessary to assure that the sector-specific ACLs for an upcoming fishing year or years will not be exceeded. The MAFMC shall review these recommendations and, based on the recommendations and public comment, make recommendations to the Regional Administrator with respect to the measures necessary to assure that sector ACLs are not exceeded. Included in the recommendation will be supporting documents, as appropriate, concerning the environmental and economic impacts of the final rule. The Regional Administrator will review these recommendations and any recommendations of the ASMFC. After such review, the Regional Administrator will publish a proposed rule in the **Federal Register** to implement a commercial quota, a recreational harvest limit, and additional management measures for the commercial fishery.

(c) *Distribution of annual commercial quota.* The black sea bass commercial quota will be allocated on a coastwide basis.

(d) *Recreational specification measures.* The Demersal Species Committee shall review the recommendations of the Black Sea Bass Monitoring Committee. Based on these recommendations and any public comment, the Demersal Species Committee shall recommend to the MAFMC and ASMFC measures that are projected to ensure the recreational ACL for an upcoming fishing year or years will not be exceeded. The MAFMC shall review these recommendations and, based on the recommendations and any public comment, recommend to the Regional Administrator measures that are projected to ensure the recreational ACL for an upcoming fishing year or years will not be exceeded. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendations. The MAFMC and the ASMFC will recommend that the Regional Administrator implement either:

(1) *Coastwide measures.* Annual coastwide management measures that constrain the recreational black sea bass fishery to the recreational harvest limit, or

(2) *Conservation equivalent measures.* Individual states, or regions formed voluntarily by adjacent states (*i.e.*, multi-state conservation equivalency regions), may implement different combinations of minimum and/or maximum fish sizes, possession limits, and closed seasons that achieve equivalent conservation as the coastwide measures established under paragraph (e)(1) of this section. Each state or multi-state conservation equivalency region may implement measures by mode or area only if the proportional standard error of recreational landing estimates by mode or area for that state is less than 30 percent.

(i) After review of the recommendations, the Regional Administrator will publish a proposed rule in the **Federal Register** as soon as possible to implement the overall percent adjustment in recreational landings required for the fishing year, and the ASMFC's recommendation concerning conservation equivalency, the precautionary default measures, and coastwide measures.

(ii) The ASMFC will review conservation equivalency proposals and determine whether or not they achieve the necessary adjustment to recreational landings. The ASMFC will provide the Regional Administrator with the individual state and/or multi-state region conservation measures for the approved state and/or multi-state region proposals and, in the case of disapproved state and/or multi-state region proposals, the precautionary default measures that should be applied to a state or region. At the request of the ASMFC, precautionary default measures would apply to federally permitted party/charter vessels and other recreational fishing vessels harvesting summer flounder in or from the EEZ when landing in a state that implements measures not approved by the ASMFC.

(iii) After considering public comment, the Regional Administrator will publish a final rule in the **Federal Register** to implement either the state specific conservation equivalency measures or coastwide measures to ensure that the applicable specified target is not exceeded.

(iv) The ASMFC may allow states assigned the precautionary default measures to resubmit revised management measures. The ASMFC will detail the procedures by which the state can develop alternate measures. The ASMFC will notify the Regional Administrator of any resubmitted state proposals approved subsequent to publication of the final rule and the Regional Administrator will publish a notice in the **Federal Register** to notify the public.

(e) *Research quota.* See § 648.22(g).

14. In § 648.144, revise paragraph (a)(1)(ii) to read as follows:

**§ 648.144 Black sea bass gear restrictions.**

(a) \* \* \*

(1) \* \* \*

(ii) Mesh sizes shall be measured pursuant to the procedure specified in § 648.108(a)(2).

\* \* \* \* \*

15. In § 648.145, revise paragraph (a) to read as follows:

**§ 648.145 Black sea bass possession limit.**

(a) During the recreational fishing season specified at § 648.146, no person shall possess more than 15 black sea bass in, or harvested from, per trip the EEZ unless that person is the owner or operator of a fishing vessel issued a black sea bass moratorium permit, or is issued a black sea bass dealer permit, unless otherwise specified in the conservation equivalent measures at § 648.150. Persons aboard a commercial vessel that is not eligible for a black sea bass

moratorium permit may not retain more than 15 black sea bass during the recreational fishing season specified at § 648.146. The owner, operator, and crew of a charter or party boat issued a black sea bass moratorium permit are subject to the possession limit when carrying passengers for hire or when carrying more than five crew members for a party boat, or more than three crew members for a charter boat. This possession limit may be adjusted pursuant to the procedures in § 648.142. However, possession of black sea bass harvested from state waters above this possession limit is allowed for state-only permitted vessels when transiting Federal waters within the Block Island Sound Transit Area provided they follow the provisions at § 648.151 and abide by state regulations.

\* \* \* \* \*

16. Revise § 648.146 to read as follows:

**§ 648.146 Black sea bass recreational fishing season.**

Vessels that are not eligible for a moratorium permit under § 648.4(a)(7), and fishermen subject to the possession limit specified in § 648.145(a), may only possess black sea bass from February 1 through February 28, May 15 through December 31, unless otherwise specified in the conservation equivalent measures at § 648.150 or unless this time period is adjusted pursuant to the procedures in § 648.142. However, possession of black sea bass harvested from state waters outside of this season is allowed for state-only permitted vessels when transiting Federal waters within the Block Island Sound Transit Area provided they follow the provisions at § 648.151 and abide by state regulations.

17. In § 648.147, revise the section heading and paragraphs (b) and (c) to read as follows:

**§ 648.147 Black sea bass size requirements.**



\* \* \* \* \*

(b) *Party/Charter permitted vessels and recreational fishery participants.* The minimum fish size for black sea bass is 12.5 inches (31.75 cm) TL for all vessels that do not qualify for a moratorium permit, and for party boats holding a moratorium permit, if fishing with passengers for hire or carrying more than five crew members, and for charter boats holding a moratorium permit, if fishing with more than three crew members, unless otherwise specified in the conservation equivalent measures at § 648.150. However, possession of smaller black sea bass harvested from state waters is allowed for state-only permitted vessels when transiting Federal waters within the Block Island Sound Transit Area provided they follow the provisions at § 648.151 and abide by state regulations.

(c) The size limits in this section applies to the whole fish or any part of a fish found in possession (*e.g.*, fillets), except that party or charter vessels possessing valid state permits authorizing filleting at sea may possess fillets smaller than the size specified if skin remains on the fillet and all other state requirements are met.

**§ 648.150 [Reserved]**

18. Add and reserve § 648.150.

19. Add § 648.151 to read as follows:

**§ 648.151 Block Island Sound Transit Zone.**

(a) Vessels not issued a Federal moratorium or party/charter permit, and recreational fishing participants fishing exclusively in state waters may transit with black sea bass harvested from state waters on board through Federal waters of the EEZ within Block Island Sound, north of a line connecting Montauk Light, Montauk Point, NY, and Block Island Southeast Light, Block Island, RI; and west of a line connecting Point Judith Light, Point Judith, RI, and Block

Island Southeast Light, Block Island, RI. Within this area, possession of black sea bass is permitted regardless of the minimum and/or maximum (as applicable) size, possession limit, and seasons outlined in §§ 648.145, 648.146, and 648.147, provided no fishing takes place from the vessel while in Federal waters of the EEZ, the vessel complies with state regulations, and is in continuous transit. During such transit through this area, commercial gear must be stowed in accordance with the definition of “not available for immediate use” found at § 648.2, and party/charter vessels and recreational participants must have all bait and hooks removed from fishing rods, and any black sea bass on board must be stored in a cooler or container.

(b) The requirements of this transit zone are not necessary or applicable for recreational fishery participants during years when conservation equivalency has been adopted under § 648.150 conservation equivalency measures and recreational Federal measures are waived.

[FR Doc. 2019-16980 Filed: 8/7/2019 8:45 am; Publication Date: 8/8/2019]